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18

A HOME-THRUST AT DUELLING.

INTENDED AS

An ANSWER to a late PAMPHLET

INTITLED,

A Hint on DUELLING.

By Way of LETTER.

To which is added,

A Speech againſt Duelling, by the great Lord BACON, delivered in the way of Charge, as Attorney-General, upon an Information in the Star-Chamber, againſt PRIEST and WRIGHT.

By Captain ABRAHAM CLERKE, of Norwich.

——————— in higheſt Heaven,
Vengeance 'mid Storms and Tempeſts fits enſhrin'd,
Veſted in Robes of Light'ning, and there ſleeps,
Unwak'd but by th'incens'd Almighty's Call.
O, let not Man preſume to take unbid
That dread Vicegerency.

ELFRIDA.

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MDCCLIII.

A

AT

PREFACE.

THE title prefixed to this performance, plainly enough intimates the deſign with which it was undertaken.

It is not therefore, to explane the nature of the ſubject, that a preface is judged neceſſary.

Much leſs is it to be aſcribed to a deſire of conforming to uſage and the general cuſtom; of which, (merely as ſuch) the author profeſſes himſelf no great admirer.

But leaſt of all is it to be imagined, that this expedient was fixed on in order to introduce an apology

for the work itſelf; ſince the author would think it a diſparagement to the glorious cauſe of truth and reaſon, (in which he engages in oppoſition to their irreconcileable enemies, prejudice, and popular opinion) ſhould he yield to ſo unneceſſary a condeſcenſion.

Nor is he willing to paſs ſo ſevere a cenſure on the generality of readers in a country, where, through the wiſdom of the legiſlature, a free and impartial examination of all things, is encouraged, and where, only the ignorant, or ill deſigning, oppoſe ſuch enquiries.

Ars non habet inimicum niſi ignorantem.

The author then, would, undoubtedly have ſpared himſelf as well as

as his reader this trouble, if he had not judged it neceſſary to obviate an objection which, he thinks it probable, may be (perhaps amongſt many others) made to his performance.

In this place the author has in view the many quotations the reader will find interperſed throughout the following ſheets, which, by ſome people, perchance, may be thought too numerous in ſo ſmall a work; and it may be ſaid, by the ill-natured, and ſuch who are fond of objecting, that it appears chiefly compoſed of other men's labours.

This objection, how powerful ſoever it may be thought, ſo as to detract in any degree from the ſmall ſhare of credit the author might poſſibly expect as a writer, will give him very little concern; ſince he can

can with great ſincerity aſſure his readers, that, of all inducements whatever, vanity claims the leaſt ſhare in this publication.

But leſt he ſhould draw upon himſelf the imputation he is ſo induſtrious to avoid, by the very means he uſes to effect it when he expreſſes himſelf in ſuch manner, it may not be amiſs to acquaint the reader, that this ſmall performance was written more than a year ago, (at the time the Hint on Duelling made its firſt appearance) and has lain dormant ever ſince. What determined the author at length to rouſe it from that ſtate, or how he may be able to acquit his own conſcience in thus expoſing his firſt and only child,* friendleſs, and deſtitute, to ſeek its fortune

* Without a Patron.

in

in the wide, uncharitable world, can be of very little ſervice to the readers to know ; neither, perhaps, would he be credited were he to tell them that, (after the example of the noble *Brutus*) he fears not to ſacrifice his child, when the good of his country is in view.

But, to ſpeak freely his ſentiments, the author is ſo far from being convinc'd the many quotations he has uſed ought, juſtly, to be imputed to him as a fault, (unleſs it ſhall appear they are ill choſen, or improperly applied, which is entirely ſubmitted to the judgment of the reader) that, for his own part, he is rather diſpoſed to think, the chief merit, if any ſhall be allowed to this performance, is reflected from them.

As in courts of judicature, ſo likewiſe in divinity, morality, hiſtory, and all inſtances of life whatever, thoſe men who have rendered themſelves the moſt remarkable for their learning, abilities, and integrity, will ever, generally, be acknowledged the beſt evidences in matters relating to truth and juſtice, yielding the greateſt ſatisfaction to ingenuous minds, whilſt they add luſtre and honour to the cauſe they are brought to ſupport.

And when it ſhall be conſidered, that the author's zeal for truth and reaſon (the only two good things worth contending for) has induced him to declare openly againſt the generally avowed opinion of thoſe who are (falſely) ſtiled the beſt and politeſt part of the community; becauſe their birth, or fortune (mere acci-

dents) by the prevalency of cuſtom, intitles them to ſuch a diſtinction, and eſpecially when it is conſidered how oppoſite thoſe principles are, the author endeavours to inculcate, to the almoſt univerſal ſentiments and practices of that body of men among whom he has pitched his tent, and to whom he is ſtrongly attached both by affection and duty; but not ſo ſtrongly as to ſuffer to be extinguiſhed in him the ſenſe of more important duties, *viz.* ſuch as he owes his country and his God.

Whoſoever ſhall lay a proper ſtreſs on theſe conſiderations, will not, the author flatters himſelf, any longer blame him, that he, under ſuch circumſtances, took every fair occaſion to convince his readers that he is not ſingular in his opinion, and did not engage in this controverſy for the

ſake of * novelty or diſtinction, ſince the wiſeſt and beſt men in every age or country, to which the infamous practice of duelling became known, have always been unanimous in their ſentiments concerning it.

Laſtly, the author readily ſubmits it to the reader's judgment, whether he has not ſufficiently † *expoſed the weakneſs and inſufficiency of the arguments* advanced by the author of

* The imputation of novelty is a terrible charge amongſt thoſe who judge of men's heads, as they do of their perukes, by the faſhion; and can allow none to be right but the received opinions. Truth ſcarce ever yet carried it by vote any where at its firſt appearance; new opinions are always ſuſpected, and uſually oppoſed, without any other reaſon, but becauſe they are not already common. But truth, like gold, is not the leſs ſo for being newly brought out of the mine. 'Tis trial and examination muſt give it price, and not any antique faſhion: And though it be not yet current by the publick ſtamp, yet it may, for all that, be as old as nature, and is certainly not the leſs genuine. LOCK.

† See the firſt paragraph of this pamphlet.

the

the Hint on Duelling; and if the reader ſhall be of opinion that he has, then, the author conceives he has fully acquitted himſelf of what he at firſt propoſed, and done every thing which could reaſonably be expected of him; and he hopes he ſhall, by the candid and judicious, be juſtified in the liberty he has taken, to illuſtrate and ſtrengthen his own arguments by backing them with the opinions of the moſt ingenious and unexceptionable writers on thoſe ſubjects.

In a matter of ſo great concern to the preſent peace and future happineſs of men, the author was willing to try every method, to make uſe of every argument that might haply affect, or tend to convince the minds of his readers, and diſpoſe them to free themſelves from the too

powerful

powerful charm of faſhion, habit, and prejudice.

What ſucceſs this undertaking will be attended with, it is difficult to determine, but ſurely no one will attempt to rob the author of the merit of his good-will towards mankind, and a ſincere and hearty deſire to ſerve his country, by endeavouring to reform a conduct ſo greatly injurious to civil ſociety, and ſo extremely diſhonourable to human nature.*

If herein he ſhall (contrary to expectation) have the happineſs to ſucceed, the end of this publication will be fully anſwered; but if, on the other hand, the aforementioned prejudices ſhould (as there is too much reaſon to fear they may) ſo far in-

* Qui non defendit, nec obſiſtit, ſi poteſt, injuriæ, tam erit in vitio quam ſi parentes, aut amicos, aut patriam deſerat. Cic.

fluence

fluence the majority as to induce them to reject the author's ſentiments, he will ſtill have this conſolation, that their cenſure will not fall upon him only, but likewiſe include a BACON, a LOCK, a TILLOTSON, a WOLLASTON, a FOSTER, &c. with whom, the author will think it a greater honour to be condemned, than to receive the higheſt encomiums from the oppoſite party.

A HOME-THRUST AT DUELLING.

To the PUBLIC.

I HAVE *aſſumed the Liberty*, (to uſe the Author's phraſe) *of tranſmitting to you my thoughts* concerning a pamphlet which lately appeared, in the form of a letter, intitled, *A Hint on Duelling*, conceiving it to be the beſt manner of expoſing the weakneſs and inſufficiency of the arguments, (if they may be thought to deſerve the name of arguments) advanced in the progreſs of that Performance.

And to this undertaking, I have the ſtronger diſpoſition when I conſider, that the ſeveral proportions and diſproportions are not more eaſy to be obſerved, in the dif-

ferent organization of men's bodies, than i their various capacities and underſtandings.

A man, for inſtance, who is ſhort-ſighted, may eaſily miſtake a heap of rubbiſh for a regular pile of building, whilſt another, clear of that defect, will be leſs liable to ſuch an error.

The application is obvious, and the beſt we can do for this perſon, will be to contrive a fit medium through which he may remedy his misfortune.

Such, is the preſent attempt, which I ſhall enter upon without further apology.

And herein I would not be ſo far miſinterpreted as that any ſhould think I intend a criticiſm on verbal, or grammatical errors, my deſign being to paſs over ſuch trifles, where the meaning of the author is at all diſcoverable.

For this reaſon I ſhall decline making any obſervations on the two firſt pages of the work before me, which appear to be intended, only as an introduction to what follows, and are not, ſo far as I can ſee, liable to any other objections than ſuch as I have already declared againſt engaging in, that is to ſay, though ſome exceptions might perhaps,

haps, juſtly, be made to the author's peculiar manner of expreſſing himſelf,

(Who never ſpake to man or beaſt,
In notions vulgarly expreſt. *Hud.*)

Yet, I think the obſervations he endeavours to eſtabliſh there, may be allowed, upon the whole, to be right.

His third page, begins with obſerving, that 'Injuries prove greater or leſs, in proportion to the ſenſibility of the injured party; and conſequently, that may cut one man to the heart, which would not diſcontinuate the ſkin of another.'

To deny the Truth of this aſſertion would be indeed, to contradict our (almoſt) daily experience, but, unluckily for the author, he has, in the very beginning, (an ill omen) betrayed his Cauſe to great danger, in producing, not the leaſt conſiderable argument againſt it, for if it be true, that mens paſſions do frequently ſubdue their reaſon, preventing calm reflection, and that an injury proves greater or leſs, according to the mere ſenſe or opinion the injured party may conceive of it, from thence it

will follow, that ſuch an offence, as ſcarce deſerves a ſerious reproof from a reaſonable man, may, by an inconſiderate one, or by a perſon, under the prejudice of falſe notions, be treated as an act of the higheſt injury and injuſtice that one man is capable of practiſing againſt another; than which, nothing can be more abſurd, or more contrary to reaſon and juſtice. And I think we may be ſatisfied that conduct is wrong, which oppoſes ſuch authority; nor need we ſeek a plainer or ſtronger argument to ſhow the abſolute neceſſity there is, to diveſt ſuch partial and inequitable judges of the power of redreſſing their own grievances, and determining and puniſhing what they ſhall deem offences.

Yet, ſuch is evidently the conduct of the duelleſt, who admits the conſideration of no other motive, than a mean and ſelfiſh * reſentment, which ſeldom holds any proportion with the offence, and is proſecuted, ever in direct oppoſition to all laws, human and divine.

* Alte in alterius exitium lævi compendio ducitur.
Senec.

The

The late ingenious Mr. *Woollaſton*, in the Religion of Nature delineated, has placed this matter in a very clear light.

Having aſſerted, that 'Every intelligent 'and free being ſhould ſo behave himſelf 'as by no act to contradict truth; or, that 'he ſhould treat every thing as being what 'it is; he ſuppoſes ſome perſon to make the 'following objection.

'If every thing muſt be treated as 'being what it is, to treat my enemy as 'ſuch is to kill him, or revenge myſelf 'ſoundly upon him.'

To this Mr. *Wollaſton* replies, 'if the 'objector's enemy, whom we will call E, 'was nothing more than his enemy, there 'might be ſome force in the objection; but 'ſince he may be conſidered as ſomething 'elſe beſide that, he muſt be uſed accord-'ing to what he is in other reſpects, as well 'as in that from which he is denominated 'the objector's (or O's) enemy; for E, in 'the firſt place is a man, and as ſuch may 'claim the benefit of common humanity, 'whatever that is, and if O denies it to 'him, he wounds truth in a very ſenſible 'part; And then if O and E are fellow-

'citizens,

'citizens, living under the ſame govern-
'ment, and ſubject to laws, which are ſo
'many common covenants limiting the be-
'haviour of one man to another, and by
'which E is exempt from all private vio-
'lence, in his body, eſtate, &c. O cannot
'treat E as being what he is, unleſs he
'treats him alſo as one, who by common
'conſent is under a protection; if he does
'otherwiſe, he denies the exiſtence of the
'foreſaid laws and publick compacts, con-
'trary to truth. And beſide, O ſhould act
'with reſpect to himſelf as being what he
'is, a man himſelf, in ſuch or ſuch cir-
'cumſtances, and one who has given up
'all right to private revenge. For (that is the
'thing meant here) if truth therefore be
'obſerved, the reſult will be this, O muſt
'treat E as ſomething compounded of a
'man, a fellow-citizen, and an enemy,
'all three, that is, he muſt only proſecute
'him in ſuch a way, as is agreeable to the
'ſtatutes and methods, which the ſociety
'have obliged themſelves to obſerve. And
'even as to legal proſecutions there may
'be many things ſtill to be conſidered, for
'E may ſhew himſelf an enemy to O in

‘ things that fall under the cognizance of
‘ law, which yet may be of moment and
‘ importance to him, or not: if they are
‘ ſuch things as really affect the ſafety
‘ or happineſs of O or his family, then he
‘ will find himſelf obliged in duty and ſub-
‘ miſſion to truth, to take refuge in the
‘ laws; and to puniſh E, or obtain ſatis-
‘ faction, and at leaſt ſecurity for the future,
‘ by the means there preſcribed. Becauſe
‘ if he does not, he denies the nature and
‘ ſenſe of happineſs to be what they are,
‘ the obligations he is under to his family
‘ to be what they are; a dangerous and
‘ wicked enemy, to be dangerous and wick-
‘ ed; and the end of laws, and ſociety it-
‘ ſelf, to be the ſafety and good of its mem-
‘ bers, by preventing injuries, puniſhing of-
‘ fenders, &c. But if the enmity of E riſes not
‘ beyond trifling or more tolerable inſtances,
‘ then O might act againſt truth, if he
‘ ſhould be at more charge or hazard in
‘ proſecuting E than he can afford, or the
‘ thing loſt or in danger is worth; ſhould
‘ treat one that is an enemy in little things,
‘ or a little enemy, as a great one, or ſhould
‘ deny to make ſome allowances, and for-

‘ give

'give ſuch peccadillo's as the common 'frailty of human nature makes it neceſ-'ſary for us mutually to forgive, if we will 'live together. Laſtly, in caſes of which 'the laws of the place take no notice, truth 'and nature would be ſufficiently obſerved, 'if O ſhould keep a vigilant eye upon the 'ſteps of his adverſary, and take the moſt 'prudent meaſures, that are compatible 'with the character of a private perſon, ei-'ther to aſſwage the malice of E, or pre-'vent the effects of it, or perhaps, if he 'ſhould only not uſe him as a friend, for 'this if he ſhould do, notwithſtanding the 'rants of ſome men, he would cancel the 'natural difference of things, and confound 'truth with untruth.'

Theſe arguments are founded on the immutable principles of reaſon, and ſuited to promote univerſal order and happineſs; yet, ſuch is the unaccountable pride and ill-humour of mankind, confirmed by bad habits and wrong judgment, that their divine influence is ſeldom experienced.

The author immediately proceeds to affirm that 'thoſe who are moſt ſenſible of 'inſults, will, with the greateſt care, avoid

'ſuch

'ſuch misbehaviour as may expoſe them 'thereto.'

But in this paſſage his meaning is rendered ſomewhat obſcure by the incorrectneſs of his expreſſion; ſince he, ſurely, who firſt *miſbehaves* is guilty of the *inſult*, and the reſentment of the offended party, ſo far as it is proportioned to the nature and degree of the offence, is no other than a proper and neceſſary check to inſolence and ill-manners.

If, then, the author would be underſtood to mean any thing, it muſt be, that they who are moſt ſuſceptible of *Offence*, will, with the greateſt care avoid ſuch ſort of *behaviour*, as is moſt likely to render them obnoxious to it. But I believe, if we conſult experience we ſhall find, that no men are ſo hot, ſo furious, and ready to fly out into indecent geſtures and expreſſions, as thoſe, who though they cannot bear contradiction, are ever moſt prone to contradict; and, from a ſcrupulous nicety of principle, which they term their honour (though it be in truth their diſgrace) ſhew no indulgence to the infirmities and imperfections of their fellow-creatures, but for every tri-

fling offence, whether real or imaginary, demand a haſty and rigorous ſatisfaction. 'Theſe are the men who determine private 'affronts to be capital crimes, not to be ex-'piated but by the blood of the offender, 'who have dared to repreſent pride and 'revenge as heroic virtues, and having 'thus inflamed theſe mercileſs paſſions, 'have made numbers of diſconſolate wi-'dows and helpleſs orphans, ruined parti-'cular families, and oftentimes diſtreſs-'ed the publick.'

Laſtly, theſe are the men, our author ſays, "of courſe muſt conſtitute a very valuable "ſet of ſubjects, with reſpect to one of the "great ends of ſociety,---the peace of par-"ticulars."

And now, to finiſh my remarks on this paſſage, I appeal (in the language of the excellent Dr. *Foſter*) to the reaſon of all mankind, which is an argument of truer greatneſs of mind,---'to be able to deſpiſe 'affronts, or, at moſt, to reſent them only 'ſo far as ſelf-preſervation, and the order 'of the world require, or, to ſuffer our-'ſelves to be ſo irritated and inflamed by 'them, as to loſe our reaſon, and that ten-

'derneſs

'derneſs of diſpoſition, which is ſo ſuitable
'to our nature, that it is juſtly ſtil'd huma-
'nity itſelf, in ſentiments of rage and cru-
'elty? To leſſen the ſum of human mi-
'ſery by out meekneſs and forbearance, or
'to aggravate it by a retaliation of injuries,
'and a furious purſuit of revenge? To ex-
'tinguiſh the flames of diſcord, or to pour
'oil upon them? And in ſhort, (which is
'the ſame thing) to be, like guardian an-
'gels, promoters of peace, and miniſters of
'publick good, or, inſtruments of confu-
'ſion and miſery?'

The author concludes, ----'the princi-
'ple of honour then, ſo far as it conſiſts
'in doing more, and ſometimes, by an un-
'avoidable reciprocation, bearing leſs, than
'the callous generality, is by no means a
'ridiculous, but a laudable principle, and
'the more ſo, as it ſeems inſeparably con-
'nected with that valour which is eſſential
'to the other great end of ſociety,---the de-
'fence of its members from external at-
'tacks.'

I have, before, I think, ſufficiently urged the neceſſity of ſhewing a mutual indulgence to the natural defects and infirmities

of each other, and that a ſtrict ſeverity for trivial faults and imperfections, if it were general, would certainly introduce eternal ſtrife and variance among men; and undoubtedly, for any individual to purſue a conduct, in its tendency, ſo injurious, and if it obtained univerſally, (for which there is the ſame reaſon, it being equally juſtifiable in all, as in any one) entirely deſtructive of the peace of ſociety, muſt be highly wicked and unnatural.

This may ſerve as an anſwer to what the author advanced, concerning *the principle of honour's being (ſo far as it conſiſts ſometimes by an unavoidable reciprocation, in bearing leſs than the callous generality) by no means a ridiculous but a laudable principle.* But how it conſiſts in influencing men to do no more *than the callous generality*, I profeſs I cannot underſtand, otherwiſe than what experience has convinced me of, *viz.* that it renders them more inſulting, poſitive, and aſſuming. Accordingly, they who are attached to this principle, generally treat the reſt of mankind with haughtineſs and diſdain; uſurping an unnatural and oppreſſive authority

rity over their fellow-creatures, and more frequently, in a cowardly manner, over the mildeſt and moſt peaceable. One of this ſtamp, if he thinks himſelf a tolerable maſter of the ſword, (the only qualification neceſſary to my hero) aſſumes an imperious, domineering air, and proves inſolent and overbearing wherever he approaches. In inſtances of this kind, the play,---the coffee-houſes, and all places of publick reſort ſufficiently abound.

The author concludes the paſſage under conſideration with ſaying, that 'this princi-'ple of honour (which urges to duelling) 'is the more laudable, as it ſeems inſepara-'bly connected with that valour which is 'eſſential to the other great end of ſociety, '---the defence of its members from ex-'ternal attacks.'

Here it may be neceſſary to obſerve, that valour (ſo far as natural courage only, or a reſolution to face danger be meant) is no virtue, conſidered in itſelf, but may, on the other hand, become extremely vicious, according to the right or wrong application of it.

The

*The true excellency of courage does not conſiſt ſo much in the ſtrength of the body and arms, as in the virtue of the mind; that is truly called courage, when a man ſubdues himſelf, keeps under his paſſions, is not weakened or drawn aſide by any temptations; is not depreſſed in adverſity, nor puffed up in proſperity.**

So far indeed, as our courage prompts us to undergo hardſhips, to combat dangers, and even hazard our lives in the ſervice of the publick, it is truly noble and generous, and has, accordingly, been ever juſtly admired and applauded; *For death is always glorious, and thoſe wounds honourable, which men receive in fighting for their country's good.*

But when it is made ſubſervient to the purpoſes of ungoverned paſſion and revenge, it becomes wicked and deteſtable; whilſt it is under the direction of reaſon, it is conſiſtent and regular, when under the influence of that falſe principle of honour the

* Non in viribus corporis et lacertis tantummodo fortitudinis gloria eſt, ſed magis in virtute animi. Jure, ea fortitudo vocatur, quando unuſquiſque ſeipſum vincit, iram continet, nullis illecebris emollitur atque inflectitur non adverſis perturbatur non extollitur ſecundis. St. *Ambroſe.*

author commends, it becomes unequal and unſteady, not like the courage of a man, but the fierceneſs of a beaſt.

And whereas, the former is the offspring of a general benevolence, the latter is founded in a ſelfiſh pride.

And as the one is calculated to protect and ſecure, ſo the other has a direct tendency to deſtroy the publick happineſs; for the unnatural duelliſt takes part with the common enemy, and helps to *weaken the government, of which he is (unworthily) a member, and from which he has, undeſervedly had protection.

This argument ſhould have great weight with military men, who are ambitious to be thought, more immediately, the defenders and protectors of their country, having generouſly devoted their lives to its ſervice. 'With what face can ſuch men put their 'own humours or unreaſonable gratifica-'tions into the ſcale, againſt ſuch a weight 'of happineſs as that of the whole nation? 'Does not he, who thus centers in himſelf, 'diſregard the good of every body elſe, and

* See Page the 27th.

entirely

'entirely ſeparate his enjoyments and in-
'tereſts from thoſe of the publick? Does
'not he, I ſay, ſtrike himſelf out of the
'roll of ſociety? Ought he to be owned as
'one of its members? Ought he not ra-
'ther to be repelled, and treated as an alien
'and enemy to the common happineſs and
'tranquillity of mankind?'

From what has been offered on this head, I think we may fairly conclude, that the principle which urges to duelling, however *laudable*, does not appear *inſeparably connected with that valour which is eſſential to a man's behaviour in the defence of his country from external attacks*. And if it ſhould be thought needful to confirm arguments by facts, every officer, who ſerved abroad in the late war, may remember inſtances of perſons being openly diſgraced for their ill-behaviour in action, who had been moſt remarkable for exerting the falſe ſpirit we are treating of, much to the annoyance of braver and better men than themſelves, and to the interruption of that harmony and concord, which does, in ſome, and ſhould exiſt in all corps.

'Indeed the world has been ſo miſerably 'deluded, as to make revenge a point of 'honour, and to tax the generous virtue of 'meekneſs with cowardice and unmanly 'baſeneſs of ſpirit;---as if a man could not 'be truly great without being a fury; and 'erecting the monuments and trophies of 'his greatneſs, by blind rage and paſſion, 'and upon the ruins of gentleneſs and mo-'deration of ſpirit; whereas, in truth, re-'venge, and not meekneſs and forbearance, 'is the weakneſs and imperfection of hu-'man nature, is deſtructive of all worthy 'and exalted qualities, and has its foun-'dation in cowardice or cruelty; for it cer-'tainly argues a want of juſt reflection, and 'calm greatneſs of mind, to endeavour to 'get rid of an enemy, by any methods that 'reaſon and religion do not warrant. And 'when men proceed farther in their reſent-'ments than their own ſecurity, in conjunc-'tion with the general good, requires, all 'the injuries which they do him, muſt be 'for the pleaſure they take in his miſery; 'and conſequently muſt proceed from a 'ſavage diſpoſition, which delights in miſ-

'chief for miſchief's ſake: than which, it is 'impoſſible to conceive of a more corrupt-'ed, and profligate ſtate of human nature.'

But to return to the author, 'every ſub-'ject, in caſes wherein he ceaſes to be pro-'tected by the government, rationally 'ceaſes to be a ſubject, reverts, conſequent-'ly, into a ſtate of nature, and has a right 'to exert his own wiſdom and courage in 'his defence.'

All this I am ready to admit; every man has a right, by nature, to defend his perſon from violence and ill treatment, and to repel force by force, if he is at any time aſſaulted; nor does any law that I know of, injoin the contrary. But how does this reſpect duelling? where two people meet by agreement, at a fixt time and place, with certain weapons, to engage and deſtroy each other, can any one, without great abſurdity, ſay (as the author plainly does) they are 'ex-'erting their own wiſdom and courage in 'their defence?

'Hence, doubtleſs, (proceeds he) has 'ariſen the neceſſity of duelling, which is, 'or ſhould be, either a manly deciſion of

'ſuch differences between particulars, as 'come not within the cognizance of the 'laws of a country, or an honourable pu-'niſhment of injuries irreparable by the 'magiſtrate.'

It will ſometimes be difficult to underſtand an author's meaning, where he has uſed a term, without fixing preciſely the idea he intended to connect it with; eſpecially if the ſame word be likewiſe uſed to imply different, many times perhaps, oppoſite ſenſes. An inſtance of this kind occurs, in the paſſage before me, where the author calls Duelling, *a manly deciſion of differences*. Were I to ſpeak of a manly action, I ſhould denote an action that was directed by that noble faculty, which the great Creator has implanted in men for their ſole guidance and direction, and of courſe, ſhould term it a manly act, (*viz.* the act of a rational creature) in contradiſtinction to the actions of merely ſenſible agents.

If in this, (which ſeems to me the only proper and natural) ſenſe, the author uſes the epithet *manly*; he has been already ſufficiently anſwered. Since, whatever has a

tendency to deſtroy natural affection and humanity, and diſpoſes us to treat each other with harſhneſs and ſeverity, without juſt cauſe, or beyond a juſt degree, in defiance of all laws, and in oppoſition to the dictates of all religion, (which is manifeſtly the caſe in reſpect to duelling, as clearly has been ſhewn) cannot with much conſiſtency, I think, be called rational.

But the word *manly*, as I before hinted, which ſhould be uſed as an epithet to ſuch actions and characters only, as reſult from the due exerciſe of thoſe ſuperior talents, peculiar to, and moſt worthy the nature of man, is often ſhamefully perverted to denote ſuch actions and exertions of bodily ſtrength and courage, as depend on thoſe faculties, which the lower order of irrational beings poſſeſs, in common with, nay, in which they, in many inſtances, even greatly excel us.

From this abuſe of words has ſprung real miſchief, men have been ſo far deceived, as to value themſelves upon very low attainments, which they have been at great pains to acquire, at the expence of their

reaſon

reaſon and judgment, becauſe they are ſtiled *manly*. For inſtance, the *manly* art of boxing, which, of late, has ſo infatuated the minds of men, that ſome of the firſt rank in the kingdom, ſenators and magiſtrates, have mixed with common thieves and pick-pockets; and, by their preſence, encouraged what it was their duty to have ſuppreſſed as a very great nuiſance to ſociety.

And ſince this interpretation ſeems beſt to agree with the author's deſignation of it, I am ready to admit, that duelling is a *manly* (ſo far as mere courage only, be underſtood by that word) *deciſion of differences*, &c.

And I do further admit, that the duelliſt furniſhes the ſtrongeſt inſtance of a moſt undaunted courage;---Where ſhall we equal the intrepidity of him, who has raiſed himſelf above the fear or controul of reaſon or truth, religion or juſtice, or the author of them?

But how the author will evince duelling to be *an honourable puniſhment of injuries*, &c. I profeſs I cannot ſo eaſily conceive. Not that I have any objection to the word *honourable*, as it ſtands, being in no manner

of

of doubt, but this practice is entirely agreeable to the rules, (if it be not itſelf the very eſſence) of honour. However, I cannot avoid thinking it a great omiſſion, that the author hath not vouchſafed to indulge us with a definition of this moſt excellent principle, and I ſhould judge my own undertaking imperfect, if I were not to ſupply that deficiency; which I am the better prepared to do, having now by me, Lord *Orrery*'s ingenious remarks on the life and writings of the juſtly celebrated dean *Swift*, from whence his lordſhip has quoted the following incomparable paſſage.

'The falſe principle, which ſome men 'ſet up in the place of conſcience, to be 'their director in life, is, what thoſe who 'pretend to it, call honour; this word is 'often made the ſanction of an oath, it is 'reckoned a great commendation to be a 'man of ſtrict honour, and it is commonly 'underſtood, that a man of honour can 'never be guilty of a baſe action: this is 'uſually the ſtile of military men, of per-'ſons with titles, and of others who pre-'tend to birth and quality. It is true, in-

'deed,

'deed, that in ancient times it was uni-
'verſally underſtood that honour was the
'reward of virtue, but if ſuch honour as is
'now a-days going, will not permit a man
'to do a baſe action, it muſt be allowed,
'there are very few ſuch things as baſe ac-
'tions in nature. No man of honour, as
'that word is uſually underſtood, did ever
'pretend, that his honour obliged him to
'be chaſte or temperate, to pay his credi-
'tors, to be uſeful to his country, to do
'good to mankind, to endeavour to be wiſe
'or learned, to regard his word, his pro-
'miſe or his oath; or if he hath any of
'thoſe virtues, they were never learned in
'the catechiſm of honour, which contains
'but two precepts, the punctual payment
'of debts contracted at play, and the right
'underſtanding the ſeveral degrees of an af-
'front, in order to revenge it by the death
'of an adverſary.'

I proceed now, to the objection I before propoſed to make; the author aſſerted dueling to be *an honourable puniſhment of injuries irreparable by the magiſtrate.*

But

But how can this be? Unleſs upon a ſuppoſition that the offending party is ſure to be killed or vanquiſhed by the injured party; and will the author affirm this to be always the conſequence? Suppoſe (which is full as likely to be the event, and does, in fact, as often happen) the injured party fall, what becomes of the *honourable puniſhment* in that caſe?

Can any thing be more extravagantly abſurd than this muſt appear to all, who have not entirely diſavowed their obligations to the obſervance of reaſon and common ſenſe?

The author, towards the concluſion of the ſection,---ſays, 'This cuſtom, (duelling) 'ſome legiſlators, and particularly thoſe 'from whom we boaſt our conſtitution, 'have adopted into their laws.'

This being the aſſertion of a matter of fact, it was incumbent on the author, methinks, to refer to ſome kind of teſtimony, which, in an affair of ſo publick a nature, one would be apt to imagine, ſhould be no very difficult taſk; however, it is of no great concern neither, ſince, were it true, that all nations had *adopted it into their laws*,

it

it would be of very little ſervice to the cauſe he eſpouſes; for if men have naturally, a power to enact what laws they pleaſe, (accordingly ſome hiſtories furniſh inſtances of the moſt flagrant impieties having been licenſed by publick authority) yet, no power whatever can alter the eternally fixed natures of vice and virtue; no power can make that, which is by nature evil, to be good, darkneſs to be light, or bitter, ſweet. The names indeed are eaſily convertible, the internal eſſences of things remain the ſame.

'And when laws are plainly contrary to 'truth and natural juſtice, though they may 'paſs the uſual form and be ſtiled laws, 'yet ſince no ſuch law can abrogate that 'law of nature and reaſon, to which the 'author of our being hath ſubjected us, or 'make falſhood to be truth, and two incon-'ſiſtent laws cannot both oblige, or ſubſiſt 'together, one of them muſt give way, 'and it is eaſy to diſcern which ought to 'do it.'

* *That's very fooliſh indeed, to imagine all thoſe things are juſt, which are eſtabliſhed by the decrees and laws of the people. If right were made by the ordinances of the people, by the decrees of princes, or by the ſentences of judges; it would be right to rob on the highway, it would be right to commit adultery, it would be right to forge wills, ſuppoſing all theſe were allowed by the majority, and by the decrees of the populace.*

† In another place likewiſe, to the ſame effect.---*If the opinions and commands of weak and fooliſh men are of ſo great force, as to overturn the nature of things by their majority; why do not they eſtabliſh it by a law, that thoſe things, which are evil and pernicious, ſhall become good and advantageous? and why cannot the ſame Law make the things*

* Illud ſtultiſſimum, exiſtimare omnia juſta eſſe, quæ ſcitis ſint in populorum inſtitutis, aut legibus. Si populorum juſſis, ſi principum decretis, ſi ſententiis judicum, jura conſtituerentur, jus eſſet latrocinari; jus, adulterare; jus, teſtamenta falſa ſupponere, ſi hæc ſuffragiis aut ſcitis multitudinis probarentur. *Cic.*

† Si tanta poteſtas eſt ſtultorum ſententiis atque juſſis, ut eorum ſuffragiis rerum natura vertatur, cur non ſanciunt, ut, quæ mala perniciosaque ſunt, habeantur pro bonis, ac ſalutaribus? Aut cur, cum jus ex injuriâ lex facere poſſit, bonum, eadem facere non poſſit ex malo? *Cic.*

that

that are good, evil; as well as make an injury a lawful thing?

And here, I would desire the reader to observe the note at the bottom of the author's fourth page, in which he is pleased to give us what he fancies a reason why the practice of duelling did not obtain (for I believe we have not a single instance of it in all their history) amongst *the Romans, and some other nations*, (*viz.*) that they were strangers to that 'decency and politeness, which 'more *improved nations have found extreamly expedient.'

Now certainly, the best way to judge of the *expediency* and *usefulness* of any particular conduct will be, to enquire what the effect was, where it has been more generally pursued.

To this purpose, I shall beg leave to present the reader with a short extract from the new translation of M. *de Voltaire*'s history of the age of *Lewis* the XIVth of *France*, in the first chapter of that ingenious work, (Vol. I.) the author, speaking of the manners and genius of the age preceding the reign of *Lewis*, says, 'Almost every individual breathed nothing but the spirit of

* The Goths and Vandals, for Example.

'rage and duelling. This Gothic barbarity, 'which had been formerly authorized by 'the kings themſelves, and which was be-'come the character of the nation, contri-'buted, as much as the domeſtic and fo-'reign wars, to depopulate the kingdom; and 'it will not be ſaying too much to affirm, that, 'in the courſe of twenty years, of which, 'ten were embroiled by wars, more *French-'men* were killed by the hands of one ano-'ther, than by their enemies.'

Here appears a reaſon, worthy the *Roman* ſpirit to reject, with the utmoſt indignation, a practice, in its conſequences, ſo fatal to the peace and happineſs of a country. They were indeed, to their eternal honour be it acknowledged 'ſtrangers to that politeneſs, 'which the author, (abſurdly enough) ſays, 'more improved nations have found ex-'tremely expedient.

'If then, theſe exceſſes are not allow-'able in all, they muſt be inexexcuſable, 'and proportionably hurtful in all; and this, 'indeed, is the only rule we can follow, 'in eſtimating the excellency and importance 'of every ſocial virtue, and the infamy, 'and miſchievous conſequences of every 'unſocial

'unſocial vice.---If all men acted, as one 'vitious man, diſclaiming the ties of na- 'ture, and ſpurning at the laws and conſti- 'tutions of heaven, thinks himſelf at liber- 'ty to act, the world muſt either ſoon be 'depopulated, or ſink into a ſtate of bar- 'bariſm, ten thouſand times worſe than 'any, which is at preſent to be found among 'the moſt rude and uncivilized nations; 'which demonſtrates beyond every excep- 'tion, the tendency of relative duties, right- 'ly diſcharged, to the eſtabliſhment and 'ſupport of human ſociety, and of the op- 'poſite vices to its entire diſſolution; that 'the one are the natural means of proſpe- 'rity, the other, of moſt dreadful confuſion, 'and ruin to mankind.'

The next ſection beginning almoſt at the concluſion of the fifth page, contains ſuch ſort of reaſoning, as might induce one to ſuſpect the author's zeal for his favourite cauſe, had hurried him beyond the ſcope of his intention: in charity one would hope ſo; what he has advanced there in favour of duelling, being fully as applicable to, and as much a defence of, murder in general. This I ſhall endeavour to ſhow, by inſert-

ing the whole paſſage, with no greater alteration than where I meet with the word *duelling* putting *murder* in its ſtead, and for *death, future puniſhment*. This will ſufficiently expoſe the author's abſurd method of reaſoning, though it be in fact, more than is due to ſuch idle inconſiſtent ſtuff, to take any notice of it at all.

I leave it to the reader to compare them, and determine, whether I have done him juſtice or not.

'The inconveniencies produced by mur-
'der, muſt either affect the ſtate in general,
'or particular members of it; the ſtate can
'only be affected thereby, as it may be
'weakened by the loſs of a multitude of
'ſubjects, or of a few, on whoſe ſuperior
'abilities its welfare may depend; but na-
'ture, by the inſtinctive fear of future pu-
'niſhment implanted in all men, has ſuffi-
'ciently provided againſt the firſt apprehen-
'ſion, as the ſmalleſt ſkill in * calculation
'will evidence, to thoſe chimerical heads
'who imagine, people will wantonly take

* Were a computation made of ſuch as have fallen by *murder* for a ſeries of years, the inconſiderableneſs of the number would ill juſtify the extravagant clamour raiſed about them.

'away

'away the lives of others; and in ſettled 'governments, the current of buſineſs runs 'ſo ſmooth that very moderate capacities 'can ſtem it, without the aſſiſtance, and 'even to the excluſion of extraordinary me-'rit. The ſtate therefore rarely, very rarely, 'is a ſufferer on the ſecond account; parti-'cular perſons and families, it muſt be con-'feſſed, will ſometimes ſuffer thro' murder, 'but as it is a received maxim in politicks, 'and indeed an invariable law of nature, to 'ſacrifice the good of individuals to that of 'the whole, whenever they claſh, (govern-'ment itſelf being liable to this objection) 'they ought patiently to ſubmit, and conſole 'themſelves as well as they can, with be-'nevolent reflections, on the benefits thence 'accruing to the nation.'*

The author immediately proceeds to enumerate the *miſchiefs* he fancies would ariſe *from an abſolute eradication of theſe appeals to private valour* (as he falſly pronounces duels) by which it looks as if this gentleman were

* If it ſhould be objected that this latter part appears very unnatural when applied to murder, I acknowledge it to be true, and ſo it does equally, as applied by the author; which the reader may ſoon be convinced of, only by reinſtating the word duelling.

of

of opinion, that there is no other way to reſent an affront, than by running a man through the body, blowing out his brains, or cutting his throat; and if that be the caſe, I would ſeriouſly recommend it to ſuch as are entruſted with the education of young pupils of honour, to conſider, if it might not probably have a good effect, to let them be exerciſed for a year or two, in a butcher's ſhambles, where they would be moſt likely to extinguiſh all human tenderneſs and remorſe, (the great enemies to modern valour) and ſo lay the ſure foundation of future heroiſm.

The author does not ſeem to underſtand, that as there is a certain meaſure of puniſhment, adequate to a certain degree of guilt, ſo likewiſe, there is a certain meaſure of reſentment to be proportioned to the nature and degree of an offence; and as far as any one exceeds theſe bounds, ſo far he contradicts the eternal laws of juſtice and reaſon, changes ſituation with the perſon who before had offended him, and becomes, himſelf, the aggreſſor in proportion.

Further, I would obſerve, the right men have, as well by the laws of this country,

as

as by nature, to defend their lives and perſons againſt any kind of violence, is, at all times ſufficient to preſerve them from very grievous treatment, which duelling does rather expoſe to, than protect us from; ſince the vileſt, and worſt of men will be found, upon obſervation, the readieſt to draw the ſword, in juſtification, as it were, of their baſeneſs, as the author himſelf has inſtanced, in the narrative, with which he concludes his performance. And this ſingle argument, one would think, ſufficient to demonſtrate to men of a moderate underſtanding, the inequality and unreaſonableneſs of ſuch a practice.

The four ſucceeding pages contain not any thing which can be ſaid to bear the leaſt reſemblance or ſhadow of reaſoning, and only ſerve to evince, how ſtrong an enthuſiaſt the author is become, in reſpect to this falſe principle; which will appear ſufficiently plain to the reader, whenever he ſhall chuſe to reviſe them, to whom therefore I commend them in their genuine ſimplicity, ſince truly, they require no embelliſhment.

Yet, I cannot avoid taking notice of one paſſage, as it affords me the opportunity to introduce an opinion, which, perhaps, by ſome perſons, may be thought not the leaſt conſiderable argument againſt this infamous cuſtom.

On a ſuppoſition, that it were poſſible (which, with the author admits of a doubt) entirely *to extirpate duelling*, he ſays, 'we 'ſhould ſoon in that caſe, naturalize horrid 'crimes, which, ſpite of our licentiouſneſs, 'have happily hitherto been ſtrangers to us, 'ſuch as, inſtant murtherous revenge of 'dubious inſults, rencounters, aſſaſſinations, 'poiſonings, *&c.*'

Theſe, doubtleſs, are all of them, very great evils; and it is in ſome meaſure to be attributed to the happier diſpoſitions and tempers of our countrymen, as well as to the excellency of the laws of our conſtitution; but chiefly one would hope, to the effect of thoſe tender, humane ſentiments which our moſt holy, and inimitable religion ſo plentifully abounds with, if we experience fewer inſtances of this kind amongſt us than ſome other nations. But what will

the

the author think? if it can be demonſtrated, that the evil cuſtom, he ſo ſtrenuouſly defends, is oftentimes attended with a ſpecies of murder, more dreadful in its conſequences than any in his catalogue. Yet this is evidently certain, ſince the man who falls premeditately in a duel, deviſes and abets his own deſtruction, and is, in the ſtricteſt ſenſe, guilty of ſuicide, juſtly accounted the worſt of crimes, as men are thereby excluded from that ſincere contrition and repentance which often ſucceeds the commiſſion of other ſins, and is, in many places of our holy religion, declared, frequently to find acceptance with God. Now, whether the circumſtances of ſo unhappy a perſon are not to be deemed much more deplorable, than of one who falls wholly by the villany of another, I ſubmit to the judgment of every ſober and reaſonable man.

I ſhall take no advantage of the author's ill choice of words, (where in the 12th page) he ſpeaks of the principle of vengeance 'being univerſally, nor unuſefully in-'herent in mankind:' in a note alſo at the bottom of the ſame page,---'The principle 'of revenge has this obvious uſe, that by

'making its poſſeſſors formidable, it renders 'them leſs obnoxious to injuries.' I ſhall only take leave to obſerve, that *every degree of cruelty is the moſt contrary that can be to human nature, which we certainly ought to follow.** And I am diſpoſed to conclude charitably, the author means no more, in this place, than that a proper degree of reſentment is neceſſary to man; though it is likely, over-earneſtneſs, and a too warm zeal, might prevent him obſerving the juſt diſtinction between *vengeance* or *revenge*, and a reaſonable reſentment; for I am very unwilling to think the author is ſo ill a man as to be in love with thoſe principles.

'But, beſides the baſeneſs of revenge in 'itſelf, Chriſtianity has propoſed two other 'motives, which I cannot wholly omit, 'becauſe they are, perhaps, better adapted, 'to ſtrike the generality of manknd. We 'are, therefore, taught not to avenge our-'ſelves, becauſe vengeance belongeth unto 'God.† The general ſenſe of which paſ-'ſage, is this, that the great governor of

* Eſt hominum naturæ, quam ſequi debemus, maximè inimica crudelitas. *Cic.* † Rom. xii. 19.

'the

'the world, when he calls all mankind
'to an account, will vindicate our integrity
'from the unjuſt aſperſions that have been
'caſt upon it, redreſs all our grievances,
'and amply reward our patience and meek-
'neſs under indignities and wrongs; and at
'the ſame time will clothe all our malici-
'ous ſlanderers, and implacable enemies,
'with ſhame. He will, then, effectually
'decide all the controverſies that lie be-
'tween us. And ſince he is the ſupreme
'judge of the world, who, alone is able
'to render to every one according to his
'deeds, for men, to execute their own pri-
'vate vengeance, is in effect, to uſurp *his
'prerogative, and thruſt themſelves into
'his judgment-ſeat. And,

'Secondly, which is the moſt awful con-
'ſideration of all, we ourſelves, ſhall cer-
'tainly meet with the ſevere and dreadful
'fate of the cruel and unmerciful, if we,
'from our hearts, forgive not, every one,
'his brother, their treſpaſſes†. For it is the
'voice of nature, confirmed and ratified by
'revelation, that he ſhall have judgment

* See the Motto to this book.

† Matth. xviii. 35.

'without

'without mercy, who hath ſhewed no 'mercy.* And, indeed, with what con-'ſiſtency, or ſhadow of juſtice, can ſuch 'a one hope for the pardon of his nume-'rous and aggravated offences committed 'againſt God, who refuſes to forgive the 'little, and comparatively, trifling affronts, 'which he receives from his fellow-crea-'tures? How can ſuch expect the remiſ-'ſion of their vaſt debt of ten thouſand ta-'lents, from the ſupreme Lord and judge of 'the world, who are unwilling to exerciſe 'patience towards their brethren, but, on the 'contrary, perſecute them with the utmoſt 'ſternneſs and barbarity, for the ſmall debt of 'an hundred pence†? Can a heart, inflamed 'by mercileſs and inexorable reſentment 'preſume to pray to God, to avert his ven-'geance? Or he, who entirely ſhutteth up 'his bowels of compaſſion, have the con-'fidence to implore divine favour? And 'ſince all, who are of this character, muſt 'expect at laſt to be treated with the ut-'moſt rigour of juſtice; how great will be 'their confuſion? And how neceſſarily muſt

* Jam. ii. 13. † Matt. xviii. 24, 28.

'they

'they ſink under the weight of all their 'ſins unpardoned?

'Moſt excellent, as well as ſtrong, and 'pertinent to the preſent purpoſe, are the 'words of the ſon of *Syrach*, in the book 'of *Eccleſiaſticus*, (which, though it be 'ranked among the apocryphal writings, 'contains many moral reflections of the 'greateſt importance and advantage towards 'the right conduct of life.)---Forgive thy 'neighbour the hurt, he hath done unto 'thee; ſo ſhall thy ſin, alſo, be forgiven, 'when thou prayeſt. One man beareth 'hatred to another, and doth he ſeek 'pardon of the Lord? He ſheweth no 'mercy to a man, that is like himſelf, and 'doth he aſk forgiveneſs of his own ſins?--- 'Remember thine end, and let enmity 'ceaſe: for he that revengeth, ſhall find 'vengeance from the Lord, and he will 'ſurely keep his ſins in remembrance.*

'What then, you will ſay, is to be done? 'what to be propoſed? what, Sir, but the 'erecting of a proper court, a tribunal of ho- 'nour, where proper judges ſhall ſit to pre- 'vent the calamities, of which duelling

* Eccleſ. xxviii. 1, 2, 3, 4, 5.

'may

'may be productive, or to exact proper pe-
'nalties of the proper offenders.'

In this paſſage, the author acknowledges duelling may be productive of ill, and I doubt not, but he thinks, (as many others do) that if men could be prevented fighting in trifling quarrels and diſputes, and this method of deciſion was allowed of, only in matters of greater concern, where real injuries had been received, it would obviate all objections. This ſeems to be the point our author has in view, where he propoſes *the erecting a proper court, a tribunal of honour*, &c.

But however plauſible this opinion may appear to ſome men, on examination, I am perſuaded, it will be found to contain no leſs abſurdity, than any other of the author's advancing. The very reverſe, indeed, is rather true, I mean, that the rules of juſtice, and right reaſon, would not be ſo greatly violated, by a law, which ſhould permit men to fight on the moſt trifling occaſions, or even for their recreation (which is ſomewhat more than a bare ſuppoſition) as in caſes, where one perſon has ſuffered real injury and injuſtice from another.

In

In the former inſtance, the parties may be ſaid to be on an equality, where neither can juſtly complain of the other on account of any real, but only an imaginary injury, ſuch as, the lie given, a harſh name, or any other rude expreſſion whatever; terms, which though they juſtly occaſion ſevere reflections on their author, can do no manner of hurt to him, to whom they are directed, in the opinion of * ſenſible men, who alone are worth regarding: in theſe and all ſuch caſes, I ſay, men are pretty equally matched, and it ſeems to me much the ſame thing, as if they fought for their own, or others amuſement; nor is one party liable to ſuſtain a greater injury than the other is.

But, ſuppoſe a man of honour to have ſeduced his friend's wife, or debauched his daughter, to have ruined his fame, and deſtroyed the peace of his days; what character, for wiſdom or juſtice, would that nation bear, which ſhould, by its laws,

* To be ridiculed, aſperſed, and even treated with violence, is no diſgrace to a wiſe man; but his real diſhonour ſprings from hence, his inſulting, aſperſing, and hurting others. *Lycias.*

enjoin the injured party to challenge and fight the injurer; which ſhould make no diſtinction between the innocent and the guilty, between the ſufferer, and the oppreſſor? Here both are rendered alike obnoxious to puniſhment, where one, only, had deſerved it; and the ſatisfaction, the (already ſufficiently) injured party receives, may be, his oppreſſor's ſword in his breaſt.

Where, amongſt the moſt barbarous, uncultivated ſavages, can any ſuch inſtance be produced? This oppoſes the very intention of making laws, which is, to protect the innocent from injuſtice, and to execute judgment on oppreſſors. And further, I ſhall take the liberty to add my opinion, that, next to the enjoyning ſo inhuman a practice, by publick authority, would be, the not providing againſt it, by the ſevereſt penalties that can be thought of. Since, it would be no better excuſe, to plead, that ſome men are ſatisfied with this kind of determination, than it would be to alledge, in favour of ſuicide, that ſuch men do, willingly, and, of their own choice, deſtroy themſelves; neither proceeding being the

leſs wicked or unjuſtifiable, becauſe voluntary, but the more ſo, abundantly, and particularly in the former inſtance, as it ſeems to be in gratification of the meaneſt and baſeſt paſſion a man is capable of indulging, *viz.* revenge.

It would ill anſwer my labour, or the reader's expectation, to expoſe every abſurdity to be found in the pamphlet under conſideration, eſpecially, ſince the author has, himſelf, in a great meaſure, ſpared me that trouble, and thereby rendered ſuch an undertaking, in me, needleſs; which I doubt not, will appear evidently enough, to any who ſhall chuſe to reviſe his performance: but no where more manifeſtly, than in the remainder of this ſection.

'No longer let men of honour be haul-
'ed before incompetent judges, whoſe ſta-
'tions incapacitate them from ſympathizing
'with the accuſed, or entering into the me-
'rits of the caſe, but let them have the
'common right of *Engliſhmen*, and be tri-
'ed by their peers.'

This implies exactly the ſame ſenſe, as if the author had aſſerted, that no one is

properly qualified to ſit as a magiſtrate, to determine, in a criminal matter, unleſs it were probable he would, (had he been in the circumſtances of the perſon accus'd) have purſued the like conduct; *i.e.* been guilty of the ſame crime. This he confirms to be his meaning in the very next words, *Let them* (ſpeaking of men of honour) *have the common right of* Engliſhmen, *and be tried by their peers*; that is to ſay, Let him who hath killed another in a duel, be tried by ſuch as approve the deed. Let an aſſaſſin be tried by murderers, a robber by thieves, an impoſtor by notorious cheats, *&c.*---and an ignorant and misjudging author, by dunces, and ſenſeleſs coxcombs. This is, exactly, the ſame kind of reaſoning.

With equal abſurdity, he ſays, immediately after, 'no longer let a ſhameful death be 'the retribution of an action which the pub-'lick voice proclaims it infamous to decline.*

'But ſurely, no wiſe man will ever ſet any 'great value upon ſo low a thing as the igno-'rant commendation of ſuch as know ſo little 'what is truly valuable. He will readily pur-

* Multi famam, conſcientiam pauci verentur. *Plin.* jun

'ſue

'ſue what he takes to be right, and as he will
'not be much elated with the praiſe of ſuch
'as are no competent judges, ſo, neither
'will he be much dejected, when he is hat-
'ed, and evil ſpoke of, by them, but will
'rather count it an honour.

* *We ought to take the greateſt care, not like cattle, to follow the croud that go before, and ſo go, where others go, and not where we ſhould go.*

'Whoever is ſo fond of popular applauſe
'as to make the vulgar opinion always the
'rule of his conduct, cannot fail of being
'often led into errors;† and though he may,
'by partial and immoral actions, gain the
'applauſe of his aſſociates, or of a party,
'whoſe intereſt is contrary to the general
'good, he will, at the ſame time, moſt de-
'ſervedly be deteſted by others. Nor can any
'one attain to true and laſting honour, but
'by real merit, and ſuch a behaviour as is

* Nihil magis præſtandum eſt, quam ne, pecorum ritu, ſequamur antecedentium gregem, pergentes nanquam eundem eſt, ſed qua itur. *Sen.*

† He who is governed by what another ſays or does, without underſtanding it, and making the reaſon of it his own, is not governed by his own reaſon, and that is, by no reaſon that he has. To ſay one is led by the noſe (as we commonly ſpeak) gives immediately the idea of a brute. *Wollaſton's* Nat. del.

'adapted

'adapted to the welfare of the whole com-
'munity.

'It will be the part of wiſdom to mode-
'rate this love of reputation ſo far, as never
'to aim at it by indirect methods, or ſtrive to
'obtain it by ſuch actions as will, ſooner or
'later, deſtroy the approbation of our own
'minds, and that peace of conſcience,
'which, of all worldly poſſeſſions, is the moſt
'invaluable. All the honour we can gain by
'ſuch means, is only a falſe and deceitful
'good, which deprives us of one much
'greater, and, as it is built upon a wrong
'foundation, can never be ſound and laſt-
'ing, but will rather end in infamy and
'diſgrace.'

For when the moral qualities of any perſons appear to be wholly evil, and their actions extremely hurtful to others, (as in this caſe of duelling) they raiſe in us, not only* hatred and averſion, but alſo indignation, ſuſpending, for a time, that kindneſs and good will, which we naturally bear to all, moving us forcibly the contrary way, and

* There is, according to *Tully*, civile odium, quo omnes improbos odimus. A public hatred, by which we hate all wicked perſons in general.

inciting

inciting us to their harm and deſtruction, as creatures that are pernicious to the reſt of their kind. And thus, a *ſhameful death* is often the juſt *retribution* of ſuch a *conduct*; though this, it muſt be acknowledged, is a trifling conſideration, in compariſon with what the duelliſt has the ſtrongeſt reaſon to apprehend from the ſupreme and juſt judge of the whole earth, who alone is able to render to every one according to his deeds, whether good or evil.

I come now to conſider, what the author has ſaid in the next ſection, relating to *military gentlemen*. And do readily agree with him, that they *are* (or might be) *a very uſeful body of men*. No one needs to entertain a better opinion of the army, in general, than I do. I have the pleaſure to be acquainted with ſome officers, who are an honour to their country, a happineſs to their friends, and an ornament to ſociety. At the ſame time, it muſt be acknowledged, there are others, who remain a ſcandal and reproach, even to their ſpecies; yet theſe men poſſeſs that *nicety* of *honour* too, which, the author ſays, *alone can qualify them for their poſts*, or how is it they maintain their ſtations?

tions? And this evidently ſhews, that *the nicety of honour* (the author ſpeaks of) ſo entirely *neceſſary to qualify officers for their poſts*, conſiſts not of any commendable or virtuous principle; ſince no ſuch principle is to be found in theſe men, which inclines me to think, that the author is guilty of an error, in ſuppoſing this *nicety of honour* more *neceſſary to the character of an officer* than it really is. Or rather, in ſuppoſing *it neceſſary* at all.

Thoſe perſons, ſurely, poſſeſs an odd turn of mind, who rate a man's valour according to the number of quarrels he has engaged in, or the many duels he has fought.

It appears to me very unaccountable, that the hero, who ſo bravely interpoſed, and ſtood in the gap betwixt his country and its enemies, ſhould, under any pretence, be inſtigated or prevailed on to ſully the honour his ſword ſo nobly had acquired, by turning its point, inglorioufly, on the breaſt of his brother, his countryman; peradventure, for the moſt trifling offence.

Theſe actions, oppoſed to each other, manifeſt a contradiction; they can never proceed from the ſame principle, but are oppoſite

as

as darkneſs to light, and the preſence of the one ſeems not leſs neceſſarily to imply the abſence of the other.

'Weak and feeble minds are moſt prone 'to anger, and, by their exceeding fierce-'neſs, generally diſappoint their own pur-'poſes: but the greateſt and braveſt of men 'are always calm and ſedate, they are above 'being diſturbed with little injuries, and 'can generouſly pardon the greateſt, ta-'king more delight in mercy and forgive-'neſs, than in proſecuting revenge, when 'it is in their power.'

From theſe reflections, it appears how little reaſon the author has to complain of '*the peculiar unparalelled hardſhip of mili-'tary men*,' becauſe it ſeems, 'officers, by 'the genius of the people, are frequently 'expoſed to outrage, even in the very exe-'cution of their duty: that nicety of ho-'nour too, which alone can qualify them 'for their poſts, forbids them to *ſuppreſs* '*reſentment*, or *paſs by an affront*:' and when, at any time, in compliance with this principle, they have deſtroyed a fellow ſub-ject, (which hereby becomes a duty) 'yet, 'to military men, our preſent courts ſhew

'no lenity. And if an officer is unlucky 'enough, once in his life, to fall in with a 'wrong headed man, he is reduced to the 'cruel alternative of loſing his bread and 'character, in compliance to civil injunc-'tions, or of being executed as a criminal, 'for complying with military cuſtom.'

If what the author has advanced here be true, the army muſt no longer be ſaid to conſiſt of a *very uſeful body of men*, but, on the contrary, will juſtly be deemed the terror and averſion of the greateſt and beſt part of their country. Nor can any one, who is not a profeſſed enemy to the principles of chriſtianity, and even humanity, conſiſtently engage or abide in ſuch a ſociety as the author has deſcribed the army to be, but will, undoubtedly, think himſelf obliged, without heſitation, *to throw up his bread and character* (ſuch a character, I mean, as can depend on ſuch circumſtances) *in compliance with civil* and other *injunctions*, rather than comply with *military cuſtom*, even though there were no room to fear the being *executed as a criminal.*

But

But it may be worth while to enquire what the author intends by *military cuſtom*; he cannot mean, that there ſubſiſts any eſtabliſhed law, enjoining to military men the obſervance of ſuch a particular conduct under certain penalties; this is ſo far from being the caſe, that it is expreſly declared, in the articles of war, if any officer ſhall fight, or be, in any reſpect, aiding or aſſiſting, or ſhall not, at all times, uſe his utmoſt endeavour to prevent others, from fighting in a duel, he ſhall be caſhiered and diſmiſſed the ſervice; (or words to that effect).

The author, then, muſt be underſtood to mean no more than that ſuch a practice has been obſerved to be in uſe with military men. And if, in this ſenſe, duelling is called a *military cuſtom*, ſo, with equal propriety, may ſwearing, drinking, gaming, whoring, and all other ſuch vices as are generally to be found amongſt the worſt and moſt worthleſs of every ſect or body of men upon earth.

From hence it appears, thrt many perſons, who, in their natural diſpoſitions, would, perhaps, be fartheſt from offering

an injury, do frequently receive, very impatiently, what is held to be an indignity or affront, and are hurried on to profecute the offending party with the utmoſt rancour and reſentment, merely by the force of imitation and evil cuſtom.

*But of all the things, which the learned diſpute about, there is no one preferable to this; that we ſhould be thoroughly convinced, that we were born to do what is right, and that right is not made by opinion, but by nature.**

And ſurely, if every man is diſtinctly to be accountable for his own actions, it ſhould ſeem highly needful that every man ſhould alſo judge for himſelf.

'If education and common opinion have 'betrayed us into wrong notions of what 'relates to our happineſs and miſery, or if 'we are led into miſtakes by ſhort and partial 'views, or by the undue poſition of ob-'jects, if we have been biaſſed by preju-'dice, or blinded by paſſion: all theſe may, 'in ſome meaſure, be rectified by a fair

* Omnium, quæ in hominum doctorum diſputatione verſantur, nihil eſt profectò præſtabilius, quàm planè intelligi nos ad juſtitiam eſſe natos, neque opinione, ſed naturâ, conſtitutum eſſe jus. *Cic.*

'en-

'enquiry, and by a free and impartial uſe of 'our underſtanding, being always ready to 'lend a patient ear to inſtruction.'*

'In a matter of ſo great concern, we 'ſhould not reſt ſatisfied with the received 'opinions, nor be led by example and the 'prevailing faſhion, but determine to lay 'aſide all prejudice and partiality, not ſuf-'fering our views to be confined to ſo nar-'row a compaſs,' enſlaving our nobleſt faculty, our reaſon; from the free exerciſe of which only, we can properly boaſt our liberty.

'By purſuing this conduct, we ſhall ſoon 'be able to ſettle within ourſelves juſt opi-'nions of good and evil; every fancy and 'appearance of either will be made con-'formable to reaſon; we ſhall not be 'wavering and fickle in our conduct, nor 'diſapprove and repent what we have done, 'and reproach ourſelves with having acted 'contrary to our true intereſt.

'Thus it moſt plainly appears, how great 'a ſhare the powers of reaſon and under-

* Nemo adeo ferus eſt, ut non miteſcere poſſit,
Si modo culturæ patientem commodat aurem.
Hor. Ep.

'ſtanding

'ſtanding have, in directing our conduct;
'how near we may approach to happineſs,
'if we will ſubmit to their guidance, and
'how wide of our true aim we muſt be,
'if we neglect it; for human life may, in
'ſome reſpects, though imperfectly, be
'compared to a veſſel at ſea, where the
'winds, which ſwell the ſails and put the
'veſſel into motion, are the affections and
'paſſions, and reaſon is the maſter who pre-
'ſides at the helm, and gives orders when
'to croud, and when to furl the ſails, when
'to go right before, and when to work
'againſt the wind; and having always an
'eye to the compaſs, guides and directs the
'motion, ſo as to avoid all rocks and ſhoals,
'and bring the ſhip ſafe to the intended
'port; if there was no wind ſtirring, the
'ſhip would be perfectly becalmed and
'without motion, and when it blows a
'freſh gale, if there was no pilot to take
'care of the helm, but the veſſel muſt be
'left to drive before the winds, ſhe could
'never keep any certain courſe, nor reach
'the place for which ſhe was bound, but
'would ſoon be daſhed upon the rocks, or
'ſwallowed up by the mercileſs waves.

The

The juſtneſs of this * author's ſentiments, and his agreeable manner of expreſſing them, have tempted me to be very free with him; for which liberty (provided he is pleaſed to forgive me) I ſhall not need to make any apology to my readers.

And, now, to finiſh my obſervations on this ſubject, and add weight, at the ſame time, to what has been already advanced in the proſecution of my deſign, I ſhall beg leave to conclude, with the following juſt remarks of the ſame excellent author.

'If we could ſuppreſs the riſing motions 'of reſentment, ſo far as to forgive thoſe who 'do us wrong, return good for evil, and even 'to love our enemies, or at leaſt not to hate 'them, for any particular harm done to 'ourſelves, this is no more than what chriſ-'tianity does abſolutely require of us. The 'commands of our holy religion will, from 'their own juſt authority ſurely, claim an 'implicit obedience; yet, if we will alſo 'hearken to the voice of reaſon, it will 'convince us that all theſe precepts are righ-'teous and good, perfectly adapted to our

* The ingenious Dr. *Nettleton*.

preſent,

'preſent, as well as future happineſs. And 'though, notwithſtanding our great profeſ-'ſions of chriſtianity, experience ſhews us, 'that humility, meekneſs and charity, are 'not very faſhionable qualities, and this 'practice of forgiveneſs is contrary to the 'way of the world, yet, if we could at-'tain to it, though it were but in part, it 'would not, perhaps be found ſuch egre-'gious folly as is generally imagined; be-'cauſe it would prevent abundance of vex-'ation and diſturbance, and contribute not 'a little, to the eaſe and tranquillity of our 'lives; it would render a man ſuperior to 'thoſe ſtorms of paſſion, that wrath and 'provocation, which involve the lower 'world in ſtrife and variance, and create ſo 'much more uneaſineſs than is neceſſary to 'the generality of mankind.'

I have, at length gone through with what I at firſt propoſed, having, carefully, and I hope impartially, examined every thing, in its due place, which was proper to be conſidered. Whether the obſervations I have made are juſt, or my concluſions right, or how I may be thought to have *expoſed the weakneſs and inſufficiency of the author's arguments*,

arguments, or peradventure of my own, muſt be ſubmitted to the judgment of every candid and impartial reader.

However, ſince the author has thought fit to conclude his performance with a ſtory, it may perhaps, be expected, I ſhould make ſome obſervations thereupon.

I ſhall, therefore, endeavour, in as conciſe a manner as poſſible, to ſhow, how ill calculated the circumſtances of this narrative are, to anſwer the end the author propoſed by introducing it, (that is to ſay) *to confirm by fact* the *arguments* he had, before *advanced*, in order to evince the *reaſonableneſs* of the practice of *duelling*.

And firſt, I muſt take the liberty to declare, that *Honorius* (the hero of this tragedy) ſeems to me, upon every occaſion, to have been the weakeſt, ſillieſt wretch, I ever met with, and is, in a great meaſure, to be accounted the author of his own misfortunes. This will appear from the following circumſtances. His adverſary, *Lothario*, (the author ſays) 'was a young fellow of 'genteel perſon, dreſs and manner, whoſe 'ſpirit ſoon diſſipated a ſmall fortune, and

'whoſe ſenſe now ſupplied him with the 'means of living without any; women and 'play were among his uſual reſources, and 'he never ſcrupled to over-reach a weak 'head, or to quarter himſelf on a weak 'heart.'

This *pretty* gentleman falls, (or rather, pretends to fall) in love with *Leonora*, the wife of *Honorius*, at *Bath*, (where, it ſeems, ſhe, at that time, was, for the recovery of her health; and having (in the author's language) 'reſolved to attack her in form, 'his firſt ſtep was to inſinuate himſelf into 'the company and eſteem of *Honorius*. He, 'undeſigning and unſuſpecting, entered in-'to an intimacy, and e'er long into a warm 'friendſhip with the fraudulent artificer; 'at the cloſe of the ſeaſon, invites him to 'his houſe, where the intended viſit of a 'week was prolonged for months.'

Before I proceed farther, I would deſire to aſk the reader, what he finds, in the character of *Lothario* that could recommend him to the notice, (much leſs to the ſo intimate friendſhip) of any man, who was not an arrant fool, or, of the ſame ſtamp? Or how can it be conceived a man of ordinary capacity,

capacity, ſhould be impoſed upon, by one, of ſo notorious a conduct, who lived, by his wits, as it's generally termed, that is, by gaming, ſharping, and intriguing; as the author himſelf acknowledges?

Notwithſtanding, this new acquired friend was held ſo dear by *Honorius*, that, upon his going to the *Weſt-Indies*, to take poſſeſſion of what was fallen to him by the death of a relation, he leaves 'to his honour, the 'care of his wife and family; and to his 'advice, the management of all his affairs.

Now, had the author intended to have ſurprized his readers with ſomething quite new, and unexpected, he ſhould have related, how that *Honorius*, at his return home, after a tedious abſence, found his family in the utmoſt compoſure and good order; his wife and children greatly improved and inſtructed by the agreeable converſation, and ſolid judgment of his friend, and even his fortune, not a little encreaſed, by his prudent direction and management.

But, inſtead of this, he acquaints us, that 'when *Honorius* came home, he found his 'wife, ſelf-deſtroyed by poiſon, and a pa-'per by her, wherein ſhe diſcloſed the

'whole ſcene of villainy that had been act-
'ed during his abſence, and very ingenu-
'ouſly acknowledged her criminal ſhare in
'it; *viz.* that his friend *Lothario* having
'found means to debauch her, and embez-
'zle his fortune, hearing, at length, of the
'arrival of *Honorius*, propoſed to her to
'elope, with ſuch of her huſband's effects
'as ſhe could get at, and commence a law-
'ſuit with him for a ſeparation, promiſing
'her his protection, and, by his manage-
'ment, ſucceſs. But, perceiving her irreſo-
'lute, he abandoned her, and her houſe,
'the night before her huſband's arrival.'

Honorius, upon this, fired with revenge, and impatient of delay, immediately purſues his enemy to *London*, and ſends him a challenge, in writing, for the next morning. *Lothario*, (that his character may appear conſiſtent) is repreſented, by the author, a man of too ſtrict honour to decline fighting in any cauſe, and was, moreover, *maſ-*
'*ter of the ſword*; 'glad too, to find the
'determination of ſo bad an affair put on ſo
'fair a footing, he meets him accordingly,' and is killed by *Honorius*; who, notwithſtanding, had very little reaſon to commend his

his good fortune, being afterwards tried, convicted, and executed, for having thus openly violated, and acted in defiance to, the known laws of his country.

This proceeding of *Honorius*, if I mistake not, sufficiently justifies my opinion of him; for if we consider it in this light only, What could more evidently demonstrate the fool or madman, than for him, thus inevitably, to throw away his life, merely for a chance of revenging himself on his enemy? a bad chance too perhaps, since *Lothario*, being *master of the sword*, had, in all probability, the advantage in this respect, as he certainly had, most considerably in another; for if fortune had declared on his side, *Lothario* (though I confess, I cannot see a reason for it, each party, in respect to duelling, appearing to me, a principal) had, in all likelihood, escaped the punishment which was inflicted on *Honorius*.

However, the author is not ashamed to declare publickly, his approbation of *Honorius*'s conduct, having introduced this story as a fit instance of the expediency and reasonableness of duelling. He calls it, 'man-

'fully

'fully reſenting injuries too big for huma-
'nity to bear,' and thinks *thoſe laws too ſe-
vere*, which ſhew *no favour* to the *unhappy
duelliſt*, as he juſtly ſtiles him.

From all which, it is evident, that the author has attended very little to the ſtudy of the nature, and true end of civil government, or he muſt quickly have foreſeen the conſequences of leaving it to partial and unreaſonable men to judge and determine in their own concerns.

Had he ſought impartially, the opinions of wiſe and good men, he had ſoon learned that 'by referring it to private ſubjects, 'to redreſs their own grievances, and both 'to judge and puniſh offences, tends to the 'utter ſubverſion of all government, of all 'order and civil ſociety.---And finally, that 'it is this moſt pernicious and unnatural 'principle, that has produced the ſpurious, 'hateful brood of tyrants, oppreſſors, per-'ſecutors, and mad violent heroes; who 'are eternal enemies to liberty, and to the 'peace of the world; and plunder, and de-'ſtroy their fellow-creatures, in defiance 'of juſtice and humanity. Theſe indeed, 'through the unaccountable prejudice of the 'world,

'world, are frequently celebrated as great
'characters: but for what are they eminent,
'---Unleſs it be for the enormous ſize of
'their guilt and infamy? if trophies of ho-
'nour may be raiſed upon ſo baſe and de-
'teſtable a foundation, honour muſt be an
'enemy to human nature, and at irrecon-
'cileable variance with every thing that is
'amiable, praiſe-worthy, and uſeful.'

THE

THE

SPEECH

OF

FRANCIS BACON,

Baron of VERULAM, Viſcount St. ALBANS,

AND

Lord High Chancellor of ENGLAND,

AGAINST DUELLING.

Delivered in the way of Charge, as Attorney-General, upon an Information in the Star-Chamber, againſt PRIEST and WRIGHT; (in the Reign of JAMES I.)

MY LORDS,

I Thought it fit for my place, and theſe times, to bring before your lordſhips the caſe of private duels; to ſee if this court can reclaim ſo unbridled an evil. It may therefore be proper to conſider the nature, the cauſes, and the remedies of duelling, which the laws of *England* provided in this reſpect.

When revenge is extorted out of the magiſtrate's hand, and every man ſhall bear

the ſword, not to defend, but to aſſault; and private men give law to themſelves, and pretend to right their own wrongs; no mortal can foreſee the dangers and inconveniencies, that may ariſe and multiply thereon.

It may cauſe ſudden ſtorms in court, to the diſturbance of the king and danger of his perſon; it may grow from private quarrels to tumult and commotion; from particular perſons, to diſſentions of families and alliances, and even to national quarrels; according to the infinite variety of accidents, which fall not under foreſight; ſo that the ſtate by this means is like a diſtempered and imperfect body, continually ſubject to inflammations and convulſions.

Beſides, both in divinity and policy, offences of preſumption are the greateſt. Other offences yield to the law, not daring to juſtify themſelves; but this offence expreſly affronts the law, as if there were two laws; one a kind of gown-law, and the other a law of reputation, as they term it; ſo that the pulpit and the courts of juſtice muſt give place to the law of tavern-tables, and ſuch reverend aſſemblies, and the

the year-books, and ſtatute-books, give place to certain *French* and *Italian* pamphlets upon the doctrine of *Duels*.

Again, 'tis a miſerable effect when hopeful young men, ſuch as the poets call *Sons of the Morning*, on whom the expectation and comfort of their friends depend, ſhall be caſt away in ſuch a vain manner; but much more it is to be deplored, when ſo much noble and genteel blood ſhall be ſpilt upon ſuch follies; when if it ventured in the field, in ſervice of king and country, it might turn the fortune of a day, and ſway the fate of a kingdom. So that this ſpirit of duelling diſturbs peace, diſfurniſhes war, brings calamity upon private men, danger upon the ſtate, and contempt upon the law.

As to the cauſes of duels, the firſt motive no doubt is a falſe and erroneous notion of honour and reputation; whence they are properly called *bewitching Duels*. For to judge truly, it is no better than a ſorcery that enchants the ſpirits of young men, bearing great minds, with a falſe ſhow, and a kind of ſatanical illuſion and apparition of honour, againſt religion, againſt law, againſt moral virtue, and againſt the precedents and

examples of the beſt and moſt valiant nations.

This being the ſeed of the miſchief, it is nouriſhed by vain diſcourſes, raw, and unripe conceits, which have nevertheleſs ſo prevailed, that though a man were ſtaid and ſober-minded, and rightly conceived the vanity and unlawfulneſs of theſe duels, yet the ſtream of vulgar opinion impoſes a neceſſity upon men of worth and merit to conform themſelves; or elſe there is no living or looking upon men's faces. Whence we have not to do, in this caſe, ſo much with particular perſons, as with unſound and depraved opinions; like the dominations and ſpirits of the air, which the ſcripture ſpeaks of.

We may add, that men have almoſt loſt the true notion of fortitude and valour: for fortitude diſtinguiſhes the grounds of quarrels, whether they be juſt and worthy; and ſets a better price upon men's lives, than to beſtow them idly. And indeed 'tis a weakneſs and diſeſteem of a man's ſelf, to put one's life upon ſuch childiſh performances. A man's life is not to be trifled away, 'tis to

be

be offered up and ſacrificed to honourable ſervices, publick merit, good cauſes, and noble adventures. 'Tis, in expence of blood, as 'tis in expence of money; to make a profuſion upon every vain and idle occaſion, is no liberality; nor is it fortitude, to make effuſion of blood, unleſs the cauſe be worthy.

There are four things that ſeem very effectual for repreſſing this depraved cuſtom of particular combats.

The firſt is, that there appear, and be declared, a conſtant and ſettled reſolution in the ſtate to aboliſh it. For this is a thing that muſt go down at once, or not at all; when every particular man will think himſelf acquitted in his reputation, finding that the ſtate takes it as inſult againſt the king's power and authority, and thereupon has abſolutely reſolved to ſuppreſs it. So it was delivered in expreſs words, in the edict of *Charles* IX of *France*, concerning duels, that the king took upon himſelf the honour of all that thought themſelves grieved or intereſted for not having fought the duel. And thus muſt the ſtate do in this buſineſs; and truſt them, not a man of a reaſonable and ſober diſpoſition, be he ever ſo valiant,

but

but will be glad of it, when he ſhall ſee the law and rule of ſtate take off his hands a vain and unneceſſary hazard.

Secondly, Care muſt be taken that this evil be not pampered, nor its humour fed, the publick compounding of quarrels, which is otherwiſe in uſe by private noblemen, and gentlemen, appears ſo punctual and formal, and has ſuch reſpect and relation to the received opinions, what's before-hand, and what's behind hand, as without all queſtion, it in a manner countenances and authorizes this practice of duels, as if it had in it ſomewhat of law and right.

Thirdly, as the offence is grounded upon a falſe notion of honour, it ſhould be puniſhed in the ſame kind. The fountain of honour is the king and his countenance, the acceſs to his perſon continues honour in life; and to be baniſhed his preſence, is one of the greateſt poſſible eclipſes of honour. Now if the king ſhould be pleaſed, when any of theſe offences are committed by perſons of eminent quality, to baniſh or exclude them his court for certain years; I think there is no man of good blood will commit an act that ſhall caſt him into the darkneſs

darkneſs of not beholding his ſovereign's face.

Laſtly, the root of this offence is ſtubborn; for it deſpiſes death, the utmoſt of puniſhments. And it were a juſt, but a miſerable ſeverity, to execute the law without all remiſſion or mercy, where the cauſe proves capital. Yet the late ſeverity of *France* was greater, where, by a kind of martial law, eſtablſhed by king and parliament, the perſon, who had ſlain another, was preſently had to the gibbet, inſomuch, that gentlemen of great quality were hanged with their wounds bleeding; leſt a natural death ſhould prevent the example of juſtice. But the cauſe we propoſe, is of greater lenity, though of no leſs efficacy, which is to puniſh all the middle acts of proceedings that tend to the duel, and ſo to hew and vex the root in the branches; which, no doubt, in the end, will kill the root, and yet prevent the extremity of the law.

The law of *England* is excepted to, as deficient in two points with regard to duels.

The *one*, that it ſhould make no difference between an inſidious and foul murder, and

the killing of a man upon fair terms, as they now call it.

The *other*, that it has provided no ſufficient puniſhment, and reparation for contumelious words; as the lie, and the like.

But theſe are no better than childiſh novelties, againſt the divine law, againſt all laws, in effect, and againſt the example of all the braveſt and moſt virtuous nations of the world.

In the law of God, there is no difference found, but between homicide voluntary and involuntary. And in the caſe of manſlaughter, or accidental murder, there were cities of refuge; ſo that the offender was put to his flight, and that flight was ſubject to accident, whether the revenge of blood ſhould overtake him before he had got ſanctuary or no. 'Tis true, our law has made a more ſubtile diſtinction between the will inflamed, and the will adviſed, between man-ſlaughter in heat, and murder upon malice prepence, or cold blood, as the ſoldiers call it; an indulgence ſuited to a cholerick and warlike nation; for *Rage is a ſhort fury, and a man in paſſion is not himſelf.*

This

This privilege of paſſion the ancient *Roman* law reſtrained to the caſe of the huſband's taking the adulterer in the fact; to that rage and provocation only, it admitted homicide as juſtifiable. But for a difference in the caſe of killing and deſtroying a man, upon a forethought purpoſe, between foul and fair, 'tis a monſtrous child of this latter age, and without all ſhadow in any law, divine or human. Only we find in ſcripture, that *Cain* inticed his brother into the field, and ſlew him treacherouſly; but *Lamech* vaunted of his manhood, that he would kill a young man, though it were to his hurt. So that I find no difference between an inſidious, and a braving or preſumptuous murder, but the difference between *Cain* and *Lamech*.

All hiſtory allows that *Greece* and *Rome* were the moſt valiant and generous nations of the world; and what is more to be noted, they were free ſtates, and not under a monarchy. Whence one would think it much more reaſonable, that particular perſons ſhould have righted themſelves; and yet they had not this practice of duels, nor any thing like it; and ſurely they would

have had it, if there had been any virtue in it. It is memorable, that there was a combat of this kind, between two perſons of quality among the *Turks*, when, one of them being ſlain, the other was convened before the council of baſhaws, and the manner of the reprehenſion was this; " How " durſt you fight? Are there not chriſtians " enough to kill? Did you not know that " whoever was ſlain, the loſs would be the " grand ſeignior's?" So that the moſt warlike nations, whether generous or barbarous, have ever deſpiſed this manner of dueling, wherein men now glory.

'Tis true, two kinds of combats ſeem authorized, the one, when upon the approach of armies, in the face of one another, particular perſons have made challenges for a trial of valour in the field, upon a publick quarrel. This the *Romans* called *Pugna per provocationem*, and was never, but between the generals themſelves, who were abſolute; or between particulars, by licence of the generals, and not upon private authority. So *David* aſked leave when he fought with *Goliah*, and *Joab*, when the armies were met, gave leave, and ſaid,

ſaid, *Let the young men play before us.* And of this kind was that famous example in the wars of *Naples*, between twelve *Spaniards* and twelve *Italians*, where the *Italians* bore away the victory. Beſides other infinite the like examples worthy and laudable, ſometimes by ſingle perſons, and ſometimes by numbers.

The ſecond kind of combat is a judicial trial of right, when the right is obſcure, introduced by the *Goths* and the northern nations, but were anciently entertained in *Spain*. And this yet remains in ſome caſes as a divine lot of battle, though controverted by divines, as to the lawfulneſs of it; ſo that, as a wiſe writer ſays, "They who engage "in this manner, ſeem to tempt God, as "expecting he ſhould ſhew and work a "miracle, and make him victorious whoſe "cauſe is the juſteſt; whereas the contrary "often happens." But however it be, this kind of combat has its warrant from law. Nay, the *French* themſelves, whence this folly ſeems chiefly to have ariſen, never had it, but in practice and toleration, not authoriz'd by law; and yet of late they have been obliged to purge this folly with extreme

treme rigour; insomuch, that many gentlemen, left between death and life in the duels, were hurried to the gibbets with their wounds bleeding. For the state found it had been neglected so long, that nothing could be thought cruelty, which tended to suppress it.

The second defect pretended in our law, that it has provided no remedy for lies and fillips, may receive the like answer. It would have been thought madness amongst the ancient lawgivers, to assign a punishment upon the lie given; which in effect is but a word of denial, a negative of another's saying. Any law-giver, if he was asked the question, would have made *Solon*'s answer, that he had ordained no punishment for it, because he never imagined the world would have been so fantastical as to take it so heinously. The civilians dispute, whether any action of injury lie for it, and rather resolve the contrary. And *Francis* I. of *France*, who originally stamped this disgrace so deep, is taxed in the judgment of all wise writers, for beginning the vanity; as it was he, who, having himself given the lie and defy to the emperor, to make it current

current in the world, ſaid, in a ſolemn aſſembly, that no honeſt man would bear the lie: which was the fountain of this new learning.

As for words of reproach and contumely, whereof the lie was never eſteemed any, it were incredible, but that the orations themſelves are extant, what extreme and exquiſite reproaches were toſſed up and down in the ſenate of *Rome*, the places of aſſembly; and the like in *Greece*. And yet no man took himſelf fouled by them, but held them for breath, and the ſtile of an enemy; and either deſpiſed them or returned them; but no blood was ſpilt on the occaſion.

So every touch or light blow of the perſon, are not in themſelves conſiderable; only they have got upon them the ſtamp of a diſgrace, which makes ſuch trifling things great matters. The law of *England*, and all laws, hold theſe degrees of injury to the perſon, ſlander, battery, maim, and death; and if there be extraordinary circumſtances of ſpight and contumely, as in caſes of libels, baſtinadoes, and the like, the law puniſhes them exemplarily. But for this apprehenſion of a diſgrace, that a fillip

ſhould

ſhould be a mortal wound to the reputation; men ſhould hearken to the ſaying of *Gonſalvo* the great commander, who always ſaid, a gentleman's honour ſhould be of a good ſtrong warp or web, that every little thing ſhould not catch in it; whereas now they ſeem to be cob-web lawn; which certainly is weakneſs, and not true greatneſs of mind, but like a ſick man's body, ſo tender as to feel every thing. And ſo much, to ſhew the wiſdom and juſtice of the law of the land, in this particular.

For the capacity of this court, I take it for certain, that wherever an offence is capital, or matter of felony, though it be not acted, the combination or practice tending to that offence, is puniſhable in this court, as a high miſdemeanour. Now, every appointment of the field, however ſpeciouſly they may gild it, is but a combination and plotting of murder. Nor ſhall I ever account it otherwiſe, in a place of juſtice. Whence it follows, that the caſe of dueling, is a caſe fit for the cenſure of this court. And of this there are precedents in the very point of challenge.

Therefore, to come to that part that regards myſelf, I ſay, that by the favour of the king and the court, I will proſecute in this court, in the following caſes.

1. If any man appoint the field, though the fight be not performed.

2. If any man ſend a challenge in writing, or any meſſage of challenge.

3. If any man carry or deliver a writing, or meſſage of challenge.

4. If any man ſhall accept or return a challenge.

5. If any man ſhall accept to be a ſecond in a challenge, on either ſide.

6. If any man ſhall depart the realm, with intention and agreement to fight beyond the ſeas. And,

7. If any man ſhall revive a quarrel by ſcandalous reports or writings, contrary to a proclamation publiſhed in that behalf.

And this method of nipping duels in the bud, is certainly fuller of clemency and mercy, than ſuffering them to go on, and hanging men with their wounds bleeding, as they did in *France*. And for the ſupport of juſtice, true honour, religion, and the law,

law, againſt this empty diſguiſe, or puppet-ſhow of honour, I. intreat your lordſhips countenance, and aſſiſtance, in my proſecutions of this kind.

Laſtly, I have a petition to the nobility and gentry of *England*, that they would eſteem themſelves at a juſt price. *Non hos quæſitum munus in Uſus.* Their blood is not to be ſpilled like water; and that they would perſuade themſelves, there can be no form of honour, but upon a worthy ſubject.

FINIS.